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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 8, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUC980024

MCI TELECOMMUNICATIONS CORPORATION
OF VIRGINIA,
Defendant

ORDER ON RULE TO SHOW CAUSE

On April 24, 1998, the Commission entered a Rule to Show Cause directing MCI Telecommunications Corporation of Virginia ("MCIV") to appear and show cause why it should not be (i) required to comply with the Commission's interexchange carrier tariff and customer notification rules; (ii) enjoined from continuing its current manner of billing Virginia intrastate customers for its "Federal Universal Service Fee" ("FUSF") and "National Access Fee;" ("NAF") and (iii) why it should not be required to refund to such customers all amounts collected in excess of its intrastate tariffed rates.

The matter was brought on for hearing on Thursday, May 7, 1998. Appearances were entered by Sarah Hopkins Finley, Esquire, James J.R. Scheltema, Esquire, and Mary L. Brown, Esquire, for MCIV and by William H. Chambliss, Esquire, for the Commission

Staff. MCIV and the Staff agreed there were no factual issues in dispute between them. The Commission received argument of counsel on the allegations set forth in the Rule to Show Cause.

NOW THE COMMISSION having heard the argument of counsel, and having considered the pleadings, and applicable statutes and rules, is of the opinion and finds that MCIV is in violation of Commission rules and orders and should be enjoined forthwith from billing the FUSF and the usage-based NAF on intrastate calls placed by customers in Virginia; further enjoined from any future application of the FUSF to intrastate calls of its residential customers; directed to refund, with appropriate interest as set out below, all moneys illegally collected based on Virginia intrastate calls by Virginia consumers.

The facts, as noted above, are not in dispute. The Commission's Rules for Certification of Interexchange Carriers require all such carriers to notify customers in advance of any increases in the carrier's rates for intrastate services. Further, MCIV is, like other interexchange carriers, under orders to file with the Commission's Division of Communications any change in rates or tariffs.

On January 1, 1998, MCIV began imposing on certain Virginia customers the FUSF and the NAF. MCIV did not notify its customers of the impending imposition of these fees and has not filed tariffs with the Division of Communications reflecting these charges.

At the hearing, MCIV put forth argument in its defense that the imposition of these charges was permissible under a federal tariff filed by its affiliate, MCI Telecommunications Corporation, under authority of the Federal Communications Commission ("FCC"), as set out in the Telecommunications Act of 1996 (47 U.S.C. 152 et seq.) and certain FCC orders.

One charge, the FUSF, is designed to recover federally imposed obligations on carriers to support certain universal service mechanisms. MCIV argued that the FCC's Report and Order of May 8, 1997, in CC Docket No. 96-45, permits it to impose a charge on both interstate and intrastate services to recover this cost. The other charge, the NAF, recovers part of the interstate portion of non-traffic sensitive loop costs. MCIV states that, effective April 1, 1998, it has changed the manner in which it collects the NAF from a usage basis to a per-line basis and that there is now no disagreement with the Staff as to its collection.

MCIV argued that the FCC had accepted its affiliate's FUSF tariff and thus MCIV had no obligation to file appropriate revisions to intrastate tariffs, nor notify customers as required by our rules. MCIV also stated that it was not over-recovering its funding obligations and had not structured its recovery mechanism to be a "profit center."

The Staff argued that the FCC's Report and Order clearly and unambiguously requires carriers to recover their contributions for the FUSF from rates for interstate services only, citing

Paragraphs 809 and 829 of that document, and Paragraph 107 of the FCC's subsequent Report to Congress, dated April 10, 1998, also filed in CC Docket No. 96-45. The Staff further argued that various paragraphs in the Report and Order and the Report to Congress demonstrate that recovery of universal service fund obligations was not to be made via intrastate rate changes. The Staff requested the Commission to enjoin the Company from further collections of the FUSF and the NAF from rates for intrastate services and to direct MCIV to make refunds, with interest, to its customers for all collections illegally made.

The Commission agrees with the Staff that the FCC's Report and Order clearly, unequivocally and unambiguously requires that carriers must recover their universal service contributions only through their rates for interstate services only. There is no uncertainty as to this point.

The Commission agrees to some considerable extent with counsel for MCIV that the Telecommunications Act of 1996 and subsequent FCC orders have created a "mess" for carriers. However, MCIV's argument that there is sufficient latitude in the Report and Order to permit it to collect universal service contributions in intrastate rates is wholly without support. Further, MCIV's contention that the filing of a federal tariff by its affiliate, MCI Telecommunications Corporation, allows it to make changes to rates for intrastate calling is also without support. Carriers cannot make changes to rates for their

intrastate services at the FCC. For that, they must comply with the regulations and orders of this Commission. The law is well-settled on this point.

Accordingly, IT IS ORDERED THAT:

(1) MCIV is enjoined forthwith from billing the FUSF and the usage-based NAF on intrastate calls placed by its business customers in Virginia;

(2) MCIV is further enjoined from the future application of the FUSF to bills for intrastate services of its residential customers in Virginia;

(3) MCIV is directed to refund, within 60 days of the date of this Order, and with appropriate interest, all such moneys illegally collected from Virginia consumers for its usage-based FUSF and the NAF;

(4) Interest upon such refunds shall be computed from January 1, 1998, until the date refunds are made, at an average prime rate for each calendar quarter. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin or the Federal Reserve's Selected Interest Rates (Statistical Release G.13), for the three months of the preceding calendar quarter, and shall be compounded quarterly.

(5) The refunds ordered above will be accomplished by credit to each customer's account for current customers. MCIV

shall make refunds to former customers by mailing a check to the last known address of the customer.

(6) On or before October 1, 1998, MCIV shall file with the Division of Communications a document showing that all refunds have been lawfully made pursuant to this order.

(7) There being nothing further to come before the Commission, this matter is dismissed from the docket of active cases.